120 FERC ¶ 61,285
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 27, 2007

In Reply Refer To:
Gulf South Pipeline Company, LP
Docket No. RP07-560-000

Gulf South Pipeline Company, LP
9 E. Greenway Plaza, Suite 2800
Houston, TX 77046

Attention: Michael E. McMahon

Reference: Tariff Revisions - Cash-out Pricing of Unauthorized Gas

Dear Mr. McMahon:

1. On August 3, 2007, Gulf South Pipeline Company, LP (Gulf South) filed tariff sheets[1] to implement changes to its tariff provisions dealing with Unauthorized Gas, with a proposed effective date of October 1, 2007. As more fully discussed below, the referenced tariff sheets are accepted effective October 1, 2007.

2. Section 20.2 of Gulf South's General Terms and Conditions (GT&C) imposes a penalty on deliveries of "Unauthorized Gas." Unauthorized gas is defined as gas delivered into the pipeline either (1) without a scheduled nomination or (2) in amounts that exceed 110 percent of scheduled nominations on constrained areas of the pipeline or 120 percent on unconstrained portions of the pipeline. The penalty is that the pipeline will pay the shipper or point operator only 50 percent of an index price for the unauthorized gas. Section 20.2 currently provides that the index price will be the lowest of certain index prices published each week during the month of delivery in *Natural Gas Week*. Gulf South proposes to modify the index price provision to add the first week of the following month to the weekly index prices that may be used. It states that this will conform its provisions for cash-out pricing of Unauthorized Gas to the tariff provisions

[1] Second Revised Sheet No. 2709 and Original Sheet No. 2709A to Gulf South's FERC Gas Tariff, Sixth Revised Volume No. 1.

for cash-out pricing under Imbalance Resolution (section 20.1). Gulf South also proposes to correct a reference to section 11.4(c)(6), which should refer to section 11.4 in its entirety.

3. Gulf South states that its proposed change to add a fifth week to the procedure for determining the cash-out price for Unauthorized Gas is necessary, because the same opportunity for gaming exists with Unauthorized Gas as it does for imbalance resolution. The Commission, which approved adding a fifth week to the cash-out procedure for imbalance resolution, stated that the addition of a fifth week to mitigate the opportunity for price arbitrage "is reasonable to effectuate the policy underlying Order No. 637[2] of discouraging gaming."[3] Gulf South states that in using just four weeks in the cash-out procedure for Unauthorized Gas, customers have several days before the end of the month to take advantage of any difference between the cash-out price and the market price. Gulf South adds that adding a fifth week to this procedure eliminates this opportunity. Gulf South also states that its proposal is consistent with Commission policy and will conform the cash-out procedures of the Unauthorized Gas section to those of the imbalance resolution section.

4. Notice of Gulf South's filing was issued on August 15, 2007, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2007)). On August 15, 2007, BP America Production Company and BP Energy Company (together, BP) filed a protest. On August 17, 2007, ConocoPhillips Company (ConocoPhillips) filed an answer in support of BP's protest. On August 22, 2007, Gulf South filed an answer to BP's protest. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. The Commission accepts Gulf South's answer, since it has assisted us in the decision making process.

5. In its protest, BP states that it does not oppose Gulf South's proposal to use not only the weekly price indices during the Production Month but also the index price for the first week of the Post-Production Month for the Unauthorized Gas cash-out index

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[2] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000); *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127(2002), *order on reh'g*, 106 FERC ¶ 61,088(2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[3] *Gulf South Pipeline Co., LP,* 97 FERC ¶ 61,069, at 61,365 (2001).

price tariff mechanism. However, BP opposes the existing Unauthorized Gas penalty provision as "unduly harsh," on the ground that Gulf South pays the shipper or point operator only 50 percent of the lowest of the weekly index prices at four different locations, with no right for the shipper to redeliver Unauthorized Gas to eliminate the shipper's Unauthorized Gas balance. BP requests that the Commission require Gulf South to revise its tariff to allow redelivery of Unauthorized Gas during the Production Month and to limit the penalty on Unauthorized Gas not redelivered to 25percent of the cash-out price. ConocoPhillips agrees with and incorporates-by-reference the arguments in BP's protest.

6. In its answer, Gulf South asserts that BP's protest must be rejected because BP has failed to comply with its evidentiary burden under section 5 of the Natural Gas Act (NGA) by failing to offer any evidence showing Gulf South's existing tariff to no longer be just and reasonable. Gulf South also asserts that BP mischaracterizes Gulf South's Unauthorized Gas provisions and imbalance trading mechanism.

7. The Commission accepts Gulf South's filing to be effective October 1, 2007. No party has protested Gulf South's specific proposal to add a fifth week to the price indices used to determine the penalty for deliveries of unauthorized gas. In its protest, BP concedes that adding a fifth week "is a legitimate tool to supplement existing safeguards against gaming of the Unauthorized Gas mechanism by creating additional uncertainty regarding the cash-out price."[4]

8. The Commission rejects BP's contention that Gulf South's unauthorized gas penalty is unduly harsh, contrary to the policies concerning penalties adopted in Order No. 637, and should be modified pursuant to NGA section 5. BP requests that we require Gulf South to permit shippers or point operators who deliver unauthorized gas to Gulf South to take redelivery of that gas during the production month without any penalty. BP also asks that, when the shipper or point operator does not so cure the unauthorized delivery, the Commission require Gulf South to pay the shipper or point operator 75 percent of the applicable index price, instead of only 50 percent.

9. The Commission originally approved Gulf South's unauthorized gas delivery penalty in 1996, finding that the penalty "reasonably addresses the problem [Gulf South] has identified of operators delivering gas into [Gulf South's] system without contracts or nominations, or drastically in excess of scheduled nominations."[5] The Commission found that by delivering unauthorized gas and gas in excess of nominations into Gulf South's system, operators avoid capacity allocation and scheduling rules, take advantage of differences between cash-in/cash-out prices, and disadvantage customers who follow

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[4] BP protest at 4.

[5] *Koch Gateway Pipeline Co.*, 77 FERC ¶ 61,098 at 61,406 (1996).

tariff procedures. The Commission also found that such actions can threaten the operational integrity of the pipeline. In 2002, the Commission reviewed Gulf South's unauthorized delivery penalty for consistency with the new policies concerning penalties adopted in Order No. 637. The Commission found that Gulf South's "treatment of unauthorized gas purchases is a reasonable penalty mechanism and should serve to reduce cash pool costs, which are allocable to all customers."[6] Finally, in 2006, the Commission approved Gulf South's proposal to tighten its unauthorized gas delivery penalty provisions on constrained areas of its system. For example, the Commission approved Gulf South's proposal to apply the penalty to deliveries in excess of 110 percent of scheduled nominations on constrained portions of its system, instead of only deliveries in excess of 120 percent.[7]

10. BP has provided no reason why the Commission, having held that Gulf South's unauthorized gas delivery penalty is consistent with Order No. 637, should now reverse that holding and require Gulf South to modify the penalty. The Commission notes that section 20.2 of Gulf South's GT&C provides shippers and point operators subject to the penalty an opportunity to avoid the penalty by requesting to transfer the unauthorized delivery into an Interruptible Storage Service account. In addition, as Gulf South points out, its tariff contains a mechanism for it to waive the penalty in situations where the unauthorized delivery may result from inadvertent circumstances, such as when the producer is performing work on its well in order to enhance production.

11. Accordingly, the Commission accepts the proposed tariff sheets effective October 1, 2007.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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[6] *Gulf South Pipeline Co.*, 98 FERC ¶ 61,278 at 62,183 (2002), *reh'g denied*, 104 FERC ¶ 61,160 at 61,574 (2003).

[7] *Gulf South Pipeline Co.*, 117 FERC ¶ 61,255 (2006).